

properly have been raised as a legal issue on a preliminary objection, I should perhaps dispose of it summarily.

M. B. Hooker in his work on "Adat Laws in Modern Malaya" says at page 209:

"Adat perpatih recognizes two forms of property, *pesaka* — ancestral, and *charian* — acquired. The most important form of *pesaka* is, of course, land, and its inheritance is restricted to female descendants of the holder. In some cases, a male may have a life interest in such land but he cannot sell, mortgage or lease it. Since 1909, the Customary Tenure Enactment (c. 215) has laid it down that *tanah pesaka* can only be transferred to a member of one of the twelve 'tribes' of Negri Sembilan (section 7(i)). Further, sale outside the holder's clan and, in some luak, lineage, is permitted only when clan and lineage members have been given an option to purchase.

Now this act does not amount to the proposition that *tanah pesaka* is subject to 'group ownership' or that it is held 'in trust for the tribe'. The holder of *tanah pesaka* has full rights of ownership from her individual point of view, i.e. she can entirely dispose of her interest by sale or mortgage."

In so far as the submission by learned counsel for the respondents/defendants is to be treated as a submission of no case to meet, the Subordinate Courts Rules, 1950 are silent as to what should be done where a submission is not successful. Order 1 rule 2 allows the court to apply any appropriate provision with such modifications as may be necessary. Since there had been no election by the respondents, either expressed or implied, not to call evidence if the submission that there is no case to answer is rejected, I should apply the High Court practice and follow the procedure set out in *Yuill v. Yuill*<sup>(1)</sup> and hold that the respondents have not lost the right to call evidence.

Accordingly I allow the appeal and remit this case to the Magistrate's Court, Kuala Pilah, for retrial, or, if the parties agree, for the trial to be continued under Order XIX rule 11 of the Subordinate Courts Rules.

Costs to the appellant.

Order accordingly.

Solicitors: *Joseph & Son.*

## **TUCK SENG LOONG TRANSPORT SERVICE CO. LTD. v. MALAYAWATA STEEL LTD. & ANOR.**

[O.C.J. (Chang Min Tat J.) July 21, 1973]

[Penang — Civil Suit No. 25 of 1968]

*Carriage of Goods — Contract for transport of machinery — Tender — Bill of quantities part of contract — Whether contract a divisible one — Whether there was breach of contract.*

The first defendant had invited tenders for the provision of transport to carry machinery and equipment and the tender documents included detailed specifications of the machinery to be transported. The plaintiff successfully tendered for the job and entered into an agreement with the defendants. The tender was for \$178,917.50 or such other sum as may be ascertained in accordance with the specifications. The plaintiff received only \$114,557.12 and it therefore sued for the balance of \$64,360.38 less an amount of \$8,415.00 which it had waived for breach of contract. The defendant alleged that the contract was a divisible one and that the plaintiff had been paid for all the work it had performed under the contract and had no further claims on them.

**Held:** (1) the contract entered into by the parties was for the carriage of goods as set out in the bill of quantities at specific rates and was not a divisible contract;

(2) the evidence showed that other transport was used by the defendant and therefore the plaintiff was entitled to damages for breach of contract.

Cases referred to:-

(1) *Burton v. Great Northern Railway Co.*, 9 Exch. 506; 156 E.R. 216.

(2) *Attorney General v. Stewarts & Co.*, 18 T.L.R. 131.

## **B CIVIL SUIT.**

*N. Marjoribanks and Lall Singh* for the plaintiff.

*I. K. Cheah* for the first defendant.

*H. Cheah* for the second defendant.

**Chang Min Tat J.:** When the first defendant constructed a steel mill in Prai, it required transport facilities to carry the machinery and equipment to be imported for the mill from the docks to the site. Some of the plant had to pass through an intermediate stage of storage. Accordingly tenders for the provision of transport were invited. The first defendant issued a form of instruction for tendering (pages 2-3 of Agreed Bundle A) and a form of tender (pages 4-5 of A) together with specifications (pages 6-14 of A) and an addendum (pages 15-17 of A). The successful tenderer, in this case, the plaintiff, entered into an agreement, which is at pages 18-19 of A.

The tender was for \$178,917.50 "or such other sum as may be ascertained in accordance with the specifications." In the event, the plaintiff received only \$114,557.12 and therefore sued for the balance of \$64,360.38 less an amount of \$8,415 which it had waived, for breach of contract, alternatively for loss of profits.

The agreement entered into specified that (a) the tender, (d) the specifications and addendum, (e) the bill of quantities, (f) the letters and cablegrams listed in the schedule thereto and (g) the letter of acceptance dated 28 July 1966 and the reply thereto from the contractor dated 30 July 1966 "shall be deemed to form and be read and construed as part of this Agreement."

It was drawn up between the plaintiff as contractor and the first defendant as employer. It was executed on behalf of the first defendant by one K. Kuroda, who signed under the stamp of the second defendant firm and who described himself as chief of Malayawata Steel Mill Construction Team. The correspondence referred to was carried on between the plaintiff and the second defendant. The second defendant was at all times described as the management agent of the first defendant. The first defendant was therefore never at any time absent from the picture. It was a disclosed principal. Despite this, an attempt was made by the first defendant to say there was no privity of contract but, at the hearing, the first defendant abandoned this line of defence and joined hands with the second defendant in denying that there was any breach of contract or any basis for the claim for loss of profits. They grounded their defence on the contention that the contract was a divisible one, and that the plaintiff had been paid for all the work it had performed under the contract and had no further claims on them. There were other defences which must appear surprising in the light of the documents produced but fortunately they were also abandoned. There was therefore general agreement between the parties that if

on a proper construction, the agreement was seen to be a divisible one, the plaintiff would be out of court. But if the agreement was not divisible, then in order to save the time of the court there would be an enquiry by the Senior Assistant Registrar of this court to determine the damages suffered by the plaintiff.

The form of tender was entitled "Transportation of machinery and equipment," and in terms was an "offer to execute, complete the whole of the said works in conformity with the drawings, specifications and bills of quantities for the sum of Malayan dollars... or such other sum as may be ascertained in accordance with the said specifications."

It was dated 23 June 1966. The acceptance of this offer was said to be subject to an agreement in writing being entered into.

It ought to be observed that the form of tender was a printed one provided by the defendants, that the words under quotation marks in the preceding paragraph were printed and all that the tenderer had to do was to fill in the tender sum in the blank space provided. It was, as noted, for \$178,917.50.

The specification referred to provided for "the general transportation work of the machineries, materials and construction equipments for Malayawata Steel Mill to be delivered and unloaded to the site of installation or erection from the point of Prai Wharf after discharge from the lighter."

The total weight of the plant was estimated to be approximately 13,750 long tons and it was also advised that the plant would come in packages of varying tonnages. The references were all to long tons but it will be sufficient hereinafter to refer to tons.

It was specifically provided that in the summary of items over 10 ton weight "minor alteration with the figure of the exact weight shall be taken for granted, if found any". There would not appear to be any uncertainty in the minds of the defendants in respect of items of other tonnages.

It was also estimated that out of the total cargo of 13,750 tons, 3,250 tons were to be delivered into the erection site directly from the Prai wharf. This had bearing on the payment, as the work of loading and transportation to and unloading at the stock-yard for storage and subsequent reloading, transportation to and unloading at the erection site in respect of these 3,250 tons would be avoided. These 3,250 tons would consist of goods of under 5 tons to the approximate total of 3,150 tons and over 20 tons to the approximate total of 100 tons.

In the bills of quantities (page 12 of A), the details were worked out for the carriage of the 13,750 tons of cargo in their several lots and in their several stages. The quantities were supplied by the employers. The unit price per ton was tendered by the contractor. The contract price of \$178,917.50 was thus arrived at. It was the aggregate of the several sums obtained by multiplying the unit prices with the quantities. There were other bills for other handling charges and for overtime. No quantities could possibly be given and none were therefore provided. The rates were however set out by the tenderer.

The acceptance of the plaintiff's tender was incorporated in an agreement executed some consider-

able time after, in fact only on 7 April 1967, and after the plaintiff had effectively carried out a part of the contract work. It recited the acceptance and in the habendum after specifying the documents forming the complete contract, expressed the agreement in these terms:—

"3. In consideration of the payments to be made by the employer to the contractor as hereinafter mentioned, the contractor hereby covenants with the employer to execute the said works in conformity in all respects with the provisions of this agreement and of the contract.

4. The employer hereby covenants to pay the contractor in consideration of the execution of the said works and the contract price at the time and in the manner prescribed by the said contract."

In support of his contention, Mr. I. K. Cheah for the first defendant drew my attention to the distinction between entire and divisible contracts as set out in page 166 of *Halsbury's Laws* (3rd Edn.) Vol. 8:

"Contracts are indivisible where the consideration is one and entire, or where it is stated or can be gathered by necessary inference that no consideration is to pass from one party till the whole of the obligations of the other party have been completed, but where no such intention can be gathered, and the contract resolves itself into a number of considerations for a number of acts, as in the case of periodical payments for a number of services, which did not form one complete whole, the contract is divisible."

The case which Mr. I. K. Cheah relied on was the case of *Burton v. Great Northern Railway Co.*<sup>(1)</sup> There the agreement was an undertaking by the plaintiff to provide wagons, horses, etc. necessary for the cartage of grain, merchandise, etc. between two towns and to convey such grain, merchandise, etc. presented to him for that purpose at the rate of 5s. per ton. The period was specified to be for one year but well within the year, the railway company terminated the agreement. It was held that the contract was an unilateral agreement, the only contract on the part of the defendants being to pay the stipulated price for the cartage of such goods between the two towns as might be presented to the plaintiff for that purpose.

It is to be noted in that case that there was absent any bill of quantities. The amount of goods was agreed to be such as was sent to the plaintiff for carriage.

Mr. H. Cheah for the second defendant relied on the case of *The Attorney-General v. Stewarts & Co.*,<sup>(2)</sup> in which the House of Lords over-ruled the Court of Appeal and held the contract to be divisible.

In that case, the Admiralty wanted to get as cheaply as possible the kind of stone which they needed. The owners wished to get rid of the stone, the stone being of an inferior quality. The Admiralty therefore sent a circular to ascertain at what price it could buy the stone "in such quantities and at such times" as were required. As the Lord Chancellor remarked, up to this point the matter was free from doubt. Then came the form of the tender. In this form, the contractor gave the approximate amount which they could supply as 2,000,000 tons. In the acceptance of the tender there was no undertaking to accept 2,000,000 tons.

In the opinions of the Lord Chancellor and the other Law Lords who sat with him, there was in these two documents, *i.e.* the tender and the acceptance, no

contractual obligation to take 2,000,000 tons, but only an obligation to take the stone in such quantities as the Admiralty might require.

With respect, I am unable to see how either case is of any assistance to the defendants. Both cases differed on the facts from the present case. In neither was there a bill of quantities, the amount of 2,000,000 tons offered in the second case not being asked for or agreed to be accepted by the employer. The one salient feature that distinguishes the case under consideration is the specification of the goods to be carried. They were the particular goods necessary for the construction and installation of a steel mill. A substantial part was listed and particularised at page 13 of A. This part consisted of some of the machinery that would come as bulky packages of over 10 tons. The other components, though not particularised, were quantified and the tender was made at so much per ton for each stage of the loading transportation and unloading as set out. On this basis the exact figure of \$178,917.50 for Item A: Land Transportation, Item B, Site Transportation and Item C, Discharging at Prai for special Heavy Items was for the carriage, etc. of specific goods at agreed rates and this figure was the tender sum which was accepted.

The existence of such bills of quantities cannot be overlooked or their importance minimised. As was said in *Hudson's Building Contracts* (3rd Edn.) at page 109\* —

"(2) Bills of quantities

Where they exist, these are usually of the greatest importance to tenderers, since in most cases (but not all) they form part of the contract and constitute the exact measure of the work undertaken by the builder for the contract price.... The bills are prepared with the object of giving a full description of every item of work or expense entailed in the contemplated project and the quantities of each item to be deduced from or measured off the drawing."

Here, the bills of quantities were supplied by the defendants. The bills were specifically made part of the contract, which was therefore for the carriage of specific tonnages for a specific sum worked out on a unit basis.

There is clear provision in the contract itself for the payment of the contract work on this basis. In paragraphs 6-1 (at page 11 of A) of the specifications for estimates, it was provided that —

"6-1 Payment to the contractor shall be made after 45 days for the work executed up to the end of each month. Payment shall be made by the unit price per L/T. and the quantity indicated in the Bill of Lading respectively."

The reference therein could only be to the steel mill.

As for the provision of "or such other sum as may be ascertained in accordance with specifications," no difficulty need be encountered. It appeared clear in the Bill of Quantities that under D1 provisions were made for handling charges specified under paragraphs 2-4-3 of the tender form and under E1 for overtime. There could be no possibility of a prior assessment of the overtime required and so it could not be quantified. Under clause 2-4-3, provision was made for the rearrangement of the goods stored in the stock-yard. Such rearrangement was for the purpose of efficiency

A and easy clearance and would ordinarily be done by the employer's fork-lifts but where the goods exceeded the capacity of such fork-lifts, then the contractor's services would have to be relied on. This is evident even from the language in the provision which reads:

"2-4-3. Cargo stored will be taken out as necessary according to the progress of installation works.

B Though stacked and stored in the order according to the classification of installation and the degree of urgency of machinery to be installed, it is difficult to re-deliver according to the cargo brought into by orderly manner as such from the upper front side of the row stacked at storage, and there will be occasion to arrange and classify the cargo once stored in order to suffice spacing cargo coming via the next vessel, either case of which the works required in connection with such re-delivery and re-arrangement shall be performed in the manner specified in item 2-3-3 herein.

C And those cargoes beyond the capacity of employer's fork-lift truck shall be handled and stored by the contractor's own crane in accordance with the employer's instruction."

Such additional work would have to be paid for. The rates were therefore tendered and accepted. The payments for such additional work and for overtime therefore could be seen to be incapable of being incorporated in the contract-sum of \$178,917.50 and separate provision must be made for them. Such a provision was, in my view, covered by "or such sum..." The correct conjunction would perhaps have been "and", but the greater could always include the less and "such other sum" must therefore be the sum in excess of \$178,917.50 for such additional work and overtime or a greater sum than \$178,917.50 which would include such additional payment. But there is no real objection to the use of "or" and there can be no ambiguity in its use. The clear intention of the contract was to incorporate the handling and overtime charges at agreed rates as an additional item with the tender price.

F To say that the contract on the whole was for payment at piece-rate would, among other things, be to contend that the less could include the greater. It would make nonsense of the tender price that was accepted in the form it was made.

G It was however contended that the quantities supplied were all approximate, and that it was impossible to arrive at any certainty before the actual despatch. There might be some apparent justification in this contention and of course, in the tender form, the specifications were expressed to be estimates and the quantities approximate. But as noted above, the uncertainty would appear to be in the minds of the defendants only in respect of items over 10 ton in weight.

H Mr. Majoribanks relied on the *contra proferentem* rule of construction. The figures were supplied by the employer and he must have some calculable basis for arriving at them. The tender form asked for a sum certain, which could only be arrived at by multiplying the units of work with the rate per unit. It did not merely specify the rates, as would be and should be done if the contract was for piece-rate.

I For myself and with respect, I agree with the submission of Mr. Majoribanks and I also consider that if it was a matter of small differences, the plaintiff would not be coming to court, but the difference was a substantial one, a difference of about 1/3rd of the contract sum.

\* See 10th Edn. at pp. 202, 203.

To my mind, on a proper construction, the contract, entered into between the parties, was for the carriage of the goods as set out in the bill of quantities at specific rates. It was not a divisible contract. In respect however of the handling charges and overtime charges, the contract was divisible. Payment was for actual work done, at piece-rate.

I find support for the view I have taken in the representation of the defendants as seen in the correspondence between the parties (pages 23 & 26 of A) leading to a reduction in the rates for overtime and in the advice given by the first defendant to the second defendant (page 29 of A) that —

"4. According to the estimation based on the proposed conditions, the budget amount to be paid to the said sub-contractor are about M\$206,000.00 in total."

The conclusion is inevitable that the excess of \$206,000 over \$178,917.50 was a provision for extras, namely handling charges and overtime.

This should dispose of the case but there was one apparent incongruity which raised a certain difficulty. If the defendants had agreed to give the plaintiff 13,500 tons to carry but in actual fact, the plaintiff was given more than the contract provided, how was it then that the plaintiff was paid less. The defendants explained that the goods had come in smaller packages, for which the rates were less. If that was so, the reliance by them on the contention of a divisible contract must be seen to be inconsistent. The plaintiff however contended that other contractors had been employed.

I think the truth of the whole matter will come out on a consideration of the figures supplied by the defendants. An early objection was made by the plaintiff to the employment of other contractors for the transport of the goods used. (see pages 1-8 of B). It was the plaintiff's contention that such other contractors had been used. The defendants' replies to this charge were inconsistent. In reply to the first written complaint on 1 November 1966 (page 1 of B), second defendant wrote at pages 3-4 of B firstly that there was no contract to be breached until such contract had come into existence with the execution of an agreement in writing and secondly that there was an express provision for the use of constructional contractors in the handling of such goods as they needed. Additionally, second defendant denied that any other contractors had been used.

The contention that there could be no breaches of contract until after the execution of the agreement on 7 April 1967 some 10 months after submission of the tender and some considerable time after the tender was submitted on 23 June 1966 could not hold water. It was not even necessary to meet this contention by the effective doctrine of part performance. The answer lies in the contractual provision in clause 5 of the Tender (page 4 of A) which reads

"5. Unless and until a formal agreement is prepared and executed this tender together with your written acceptance thereof shall constitute a binding contract between us."

In the pleadings and at the hearing, this contention was not relied on by their legal advisers.

With reference to constructional contractors, I could nowhere find any such reservation nor was any pointed out to me. The only variation of the contract was the item under C (page 12 of A) for the discharge at Prai of specially heavy items. The provision was for \$8,415. In the event, this work was carried out, with the consent of the plaintiff by the Malayan Railways and the plaintiff did not claim this item.

As for the employment of other contractors, the proof perhaps was somewhat unsatisfactory. The plaintiff made a somewhat tentative attempt to adduce photographs of other lorries being used but even if these photographs had been properly admitted (which I, with respect, very much doubt,) they were with respect somewhat lacking in particulars. But the proof of this is, I believe, deducible in the evidence of the movement of the cargoes imported.

It was approximately quantified that some 13,750 tons would be landed at Prai. Under Item A.1 in the Bill of Quantities, they require transportation and under Item A.2 unloading eventually at the site. These goods were expected to come in the following lots: —

|              |   |             |
|--------------|---|-------------|
| Under 5 tons | — | 8,750 tons  |
| 5-10 tons    | — | 3,850 tons  |
| 10-20 tons   | — | 700 tons    |
| Over 20 tons | — | 450 tons    |
|              |   | <hr/>       |
|              |   | 13,750 tons |

Part of these goods would go direct to the erection site from Prai. The other part, not immediately needed, would be stored at the stock-yard. The goods going directly to the site would merely require transportation from Prai (Item A.1) and unloading at site (Item A.2). The goods to be stored for the time being in the stock-yard would have to be moved under Items A.1 and A.2, but would require additional handling, viz. under Item B.1, loading at the stock-yard, under Item B.2 transportation and under B.3, unloading at the erection site, for which separate charges were agreed. I interpolate an observation: There might be seen to be a duplication in the transport charges of goods that went through the intermediate stage of storage in the stock-yard as they would appear to be charged under A.2 from Prai wharf to the site and under B.2 from the stock-yard to the site. The stage from the stock-yard to the site could appear to be duplicated. But perhaps the distances from the wharf to the site and to the stock-yard were so little different, that even in the eyes of the employer, the latter transportation would have to be paid for.

To return to the matter before me. There is in Bundle C a list of the bills, receipts and various credit notes. Provided they are in sufficient detail, complete and accurate, they should give an idea of the import and transportation of the machinery and equipment. The work of compiling a summary therefore would appear to be monumental and even then I am not at all sure that they were sufficient for this purpose. However, counsel for the defence provided such a summary. It was as follows: —

## A. LAND TRANSPORTATION

|              | Quantity Quotations | 1. From Prai to Site<br>Actual Quantities | 2. Unloading at Site<br>Actual Quantities |
|--------------|---------------------|-------------------------------------------|-------------------------------------------|
| Under 5 tons | 8,750.000           | 14,343.241                                | 14,203.698                                |
| 5-10 tons    | 3,850.000           | 1,167.885                                 | 1,012.185                                 |
| 10-20 tons   | 700.000             | 319.689                                   | 319.689                                   |
| Over 20 tons | 450.000             | 227.056                                   | 222.994                                   |
|              | <u>13,750.000</u>   | <u>16,057.871</u>                         | <u>15,762.628</u>                         |

## B. SITE TRANSPORTATION

|              | Quantity Quotations | 1. Loading at Stockyard<br>Actual Quantities | 2. Transportation<br>Actual Quantities | 3. Unloading at Site<br>Actual Quantities |
|--------------|---------------------|----------------------------------------------|----------------------------------------|-------------------------------------------|
| Under 5 tons | 5,600.000           | 4,724.154                                    | 5,839.902                              | 4,404.868                                 |
| 5-10 tons    | 3,850.000           | 835.817                                      | 842.411                                | 717.173                                   |
| 10-20 tons   | 700.000             | 255.349                                      | 255.349                                | 213.845                                   |
| Over 20 tons | 350.000             | 119.885                                      | 119.885                                | 119.885                                   |
|              | <u>10,500.000</u>   | <u>5,935.205</u>                             | <u>7,057.547</u>                       | <u>5,455.711</u>                          |

Unfortunately these summarised figures are not entirely reliable. A casting error in the total of 15,762.628 for A.2 is immediately seen. There are also unexplained differences between the loads carried and the loads landed. I felt therefore I had to undertake the work. Omitting all the bills relating to handling and overtime charges, I have obtained the following figures relating to land and site transportation:

of its charges under B: Site Transportation. These quantities are the differences between the actual quantities transported from Prai and those transported at the site. They are in respect of 5 tons and under, 9,479.541 tons (14,203.695 - 4,724.154), less however by the 3,150 tons in the contract, in respect of 5-10 tons, 128.269 tons (970.680 - 842.411), in respect of 10-20 tons, 64.340 tons (319.689 - 255.349), and in respect of over 20 tons

## A. LAND TRANSPORTATION

|              | Quantity Quotations | 1. From Prai to Site<br>Actual Quantities | 2. Unloading at Site<br>Actual Quantities |
|--------------|---------------------|-------------------------------------------|-------------------------------------------|
| Under 5 tons | 8,750.000           | 14,203.695                                | 14,203.695                                |
| 5-10 tons    | 3,850.000           | 970.680                                   | 970.680                                   |
| 10-20 tons   | 700.000             | 319.689                                   | 319.689                                   |
| Over 20 tons | 450.000             | 282.764                                   | 282.764                                   |
|              | <u>13,750.000</u>   | <u>15,721.120</u>                         | <u>15,721.120</u>                         |

## B. SITE TRANSPORTATION

|              | Quantity Quotations | 1. Loading at Stockyard<br>Actual Quantities | 2. Transportation<br>Actual Quantities | 3. Unloading at Site<br>Actual Quantities |
|--------------|---------------------|----------------------------------------------|----------------------------------------|-------------------------------------------|
| Under 5 tons | 5,600.000           | 4,724.154                                    | 5,828.308                              | 4,393.274                                 |
| 5-10 tons    | 3,850.000           | 835.817                                      | 842.411                                | 717.173                                   |
| 10-20 tons   | 700.000             | 255.349                                      | 255.349                                | 213.845                                   |
| Over 20 tons | 350.000             | 119.885                                      | 119.885                                | 119.885                                   |
|              | <u>10,500.000</u>   | <u>5,935.205</u>                             | <u>7,045.954</u>                       | <u>5,444.177</u>                          |

The figures for land transportation and unloading now tally, as is reasonable to expect. The same cannot however be said of the site transportation. At the site, the differences between the amount of goods loaded and the amount unloaded must lead to the conclusion that these goods were partly unloaded by labourers other than the plaintiff's.

Insofar as the objection of the plaintiff was concerned, the figures apart from other proof establish, in my view, that other transport was used, as in the contention of the plaintiff in that part of the contract that was indivisible.

It only remains to point out that whereas the contract envisaged that only 3,150 tons of goods under 5 tons were to be sent direct to the erection site so as to avoid duplicating charges for handling, carriage and unloading in actual effect greater quantities were so transported, resulting in the plaintiff being deprived

162.879 tons (282.764 - 119.885), less also by the 100 tons provided for in the contract.

It will be seen therefore that by sending more goods to the site direct from Prai thereby avoiding the stockyard than contractually provided for, the defendants had deprived the plaintiff of a portion of its contract price.

For the reasons above, I enter judgment, in terms of the agreement between counsel, for the plaintiff in such sum by way of damages as will be ascertained on an enquiry and costs.

*Judgment for the plaintiff.*

Solicitors: *Lovelace & Hastings; I. K. Cheah; Allen & Gledhill.*